

RECEIVED
OCT 24 2006
CHAMBERS OF
HONORABLE SUSAN D. WIGENTON

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

NCH CORPORATION, NATIONAL
CHEMSEARCH CORPORATION OF NEW
JERSEY, INC., AMERICAN ALLSAFE
CO., INC. d/b/a CERTIFIED
LABORATORIES OF NEW JERSEY,
INC., MOHAWK LABORATORIES OF
NEW JERSEY, INC., or as a
DIVISION OF NCH CORPORATION, FMC
CORPORATION and LISBETH HIGGINS,

Defendants.

CIVIL ACTION NO. 98-5268 (DMC)

UNITED STATES OF AMERICA,

Plaintiff,

v.

FMC CORPORATION, and
LISBETH HIGGINS,

Defendants.

CIVIL ACTION NO. 01-0476 (JCL)

CONSENT DECREE



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I. HIGGINS FARM SUPERFUND SITE BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), in 1998 filed a complaint, civil action number 98-5268 (DMC) pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, as amended. In May 1999, the United States filed an amended complaint.

B. The United States in its amended complaint, naming NCH Corporation, FMC Corporation ("Settling Defendant") and Lisbeth Higgins as defendants, seeks: (1) reimbursement of response costs incurred by EPA and the Department of Justice for response actions at the Higgins Farm Superfund Site ("Higgins Farm"), in Franklin Township, Somerset County, New Jersey, together with accrued interest pursuant to Section 107 of CERCLA, 42 U.S.C. §9607; and (2) a declaration of liability for future response costs.

C. In accordance with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"), and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New Jersey (the "State") on May 28, 2004, of negotiations with potentially responsible parties regarding the takeover of the operation and maintenance and any other future response work and payment of response costs at the Higgins Farm Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the National Oceanic and Atmospheric Administration ("NOAA") of the Department of Commerce on May 24, 2004, and the United States Department of Interior Fish and Wildlife Service ("FWS") on May 25, 2004, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship.

E. The defendant that has entered into this Consent Decree does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Higgins Farm complaint, nor does it acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Higgins Farm Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register in March, 1989.

G. In response to a release or a substantial threat of a release of hazardous substances at or from the Higgins Farm Site, EPA conducted a Remedial Investigation and Feasibility Study ("RI/FS") for the permanent groundwater remedy at the Higgins Farm Site pursuant to 40 C.F.R. Part 300.430 from 1990 until 1992.

H. On September 24, 1990, EPA issued a Record of Decision ("1990 ROD"). The 1990 ROD provided, as an interim remedy, the installation of an alternate water supply for certain residences near the Higgins Farm Site. By May 1993, the alternate water supply had been installed.

I. On September 30, 1992, EPA issued a second Record of Decision for Higgins Farm ("1992 ROD") that documents EPA's selection of a permanent remedial action for Higgins Farm. The remedial action selected in the 1992 ROD provided for the design and construction of an on-site extraction and treatment system for contaminated groundwater, with discharge of the treated groundwater to an on-site surface water body.

J. The design and construction of the treatment plant occurred between February 1993 and May 1998. The treatment plant at Higgins Farm commenced operations in May, 1998 and continues to operate.

II. HIGGINS DISPOSAL SUPERFUND SITE BACKGROUND

K. On or about January 30, 2001, FMC Corporation filed a complaint seeking reimbursement for response actions it undertook at the Higgins Disposal Superfund Site ("Higgins Disposal"). FMC's lawsuit is civil action number 01-0476 (JCL).

L. The United States, on behalf of the EPA, in June 2001 filed a complaint pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, as amended, naming FMC and Lisbeth Higgins as defendants and seeking (1) reimbursement of response costs incurred by EPA and the Department of Justice for response actions at Higgins Disposal, in Kingston, Somerset County, New Jersey, together with accrued interest; and (2) a declaration of liability for future response costs. That lawsuit is civil action number 01-2946 (KSH).

M. During a scheduling conference on or about July 16, 2001, the Court consolidated civil action numbers 01-0476 (JCL) and 01-2946 (KSH). The controlling civil action number is 01-0476 (JCL).

N. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New Jersey on May 28, 2004, of negotiations with potentially responsible parties regarding the payment of past response costs at the Higgins Disposal Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

O. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified NOAA on May 24, 2004, and FWS on May 25, 2004, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship.

P. The defendant that has entered into this Consent Decree does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Higgins Disposal complaint, nor does it acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

Q. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed Higgins Disposal on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, in August, 1990.

R. In response to a release or a substantial threat of a release of hazardous substances at or from Higgins Disposal, EPA conducted a Remedial Investigation and Feasibility Study ("RI/FS") for Higgins Disposal pursuant to 40 C.F.R. §300.430 from 1992 through 1996.

S. On September 30, 1997, EPA issued a Record of Decision ("1997 ROD") that documents EPA's selection of a remedial action for Higgins Disposal. The remedial action selected in the 1997 ROD has two components. The first component involves the installation of an alternative water supply for the residents affected by the contaminated groundwater. The second component involves the construction of an on-site groundwater extraction system and pipeline to transmit the contaminated groundwater to the Higgins Farm Superfund Site for treatment. By September 1999, the alternate water supply had been installed.

T. On December 9, 2002, EPA issued an Explanation of Significant Differences ("2002 ESD") for Higgins Disposal. Pursuant to the 2002 ESD, the second component of the remedial action selected in the 1997 ROD has been changed to the installation of an on-site groundwater extraction and reinjection system.

U. In a Partial Consent Decree entered by the court on September 16, 2004, Settling Defendant agreed to design, construct and operate the on-site groundwater extraction and reinjection system for the Higgins Disposal Superfund Site as set forth in the 2002 ESD.

V. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of Higgins Farm and Higgins Disposal, will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

III. JURISDICTION

1. This Court has jurisdiction over the subject matter of these actions pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has

personal jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant consents to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

IV. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

V. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§9601, *et seq.*

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XVI). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

"Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph 39.

"Explanation of Significant Differences" or "ESD" shall mean the EPA Explanation of Significant Differences relating to the Higgins Disposal Site signed on December

9, 2002, by the Regional Administrator, EPA Region 2, or her delegate, and all attachments thereto. The ESD is attached as Appendix A.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code 26 U.S.C. § 9507.

"Future Response Costs for Higgins Farm" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States will pay for response actions at Higgins Farm after the Effective Date.

"Future Response Costs for Higgins Disposal" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States will incur for response actions at Higgins Disposal after the Effective Date.

"Interim Response Costs for Higgins Disposal" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Higgins Disposal Site between June 1, 2004 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

"Interest," shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

"NCH Groundwater Investigation" shall mean any investigation to be conducted by NCH Corporation or any other Party to determine if groundwater contamination has migrated beyond the Higgins Farm property borders.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

"Partial Consent Decree" shall mean the Partial Consent Decree entered by the Court on September 16, 2004, in which Settling Defendant agreed to design, construct and operate the on-site groundwater extraction and reinjection system as set forth in the 2002 ESD for the Higgins Disposal Superfund Site.

"Parties" shall mean the United States and the Settling Defendant.

"Past Response Costs for Higgins Farm" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Higgins Farm Site through the Effective Date.

"Past Response Costs for Higgins Disposal" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Higgins Disposal Site through May 31, 2004, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Plaintiff" shall mean the United States of America and the Environmental Protection Agency.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

"Remedial Action for the Higgins Farm Superfund Site" shall mean the remedial action selected by EPA for the Higgins Farm Superfund Site in the September 30, 1992 Record of Decision.

"Remedial Action for the Higgins Disposal Superfund Site" shall mean the remedial action selected by EPA for the Higgins Disposal Superfund Site in the September 30, 1997 ROD and the 2002 ESD.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settling Defendant" shall mean FMC Corporation, which has its principal place of business at 1735 Market Street, Philadelphia, Pennsylvania 19103;

"Sites" shall mean the Higgins Farm Superfund Site, located on Route 518 in Franklin Township, Somerset County, New Jersey, and generally shown on the map attached as Appendix B; the Higgins Disposal Superfund Site, located on Laurel Avenue, Kingston, Somerset County, New Jersey, and generally shown on the map attached as Appendix C; and all real property onto which or under which hazardous substances have migrated from these properties. The Higgins Farm Superfund Site is hereinafter referred to as "Higgins Farm." The Higgins Disposal Superfund Site is hereinafter referred to as "Higgins Disposal."

"State" shall mean the State of New Jersey.

"United States" shall mean the United States of America, including all of its departments, agencies and instrumentalities, which includes without limitation EPA and any

federal natural resource trustee.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(33), 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 9603(27); and (4) any "hazardous material" under the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10, et seq.

VI. REIMBURSEMENT OF RESPONSE COSTS

4. Payments by Settling Defendant for Response Costs at Both Sites

a. Within thirty (30) days of the Effective Date, Settling Defendant shall pay to EPA \$14,500,000, plus Interest from June 1, 2004 to the date of payment, in payment for response costs at the Higgins Farm Site. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 1998-V-02168, EPA Site/Spill ID Number 02-W9, and DOJ Case number 90-11-3-1486/1. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the District of New Jersey following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. Within thirty (30) days of the Effective Date, Settling Defendant shall pay to EPA \$2,000,000, plus Interest from June 1, 2004 to the date of payment, in payment for Past Response Costs at the Higgins Disposal Site. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2001-V-00202, EPA Site/Spill ID Number 02-3C, and DOJ Case number 90-11-3-1486/2. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the District of New Jersey following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

c. Within thirty (30) days of the Effective Date, Settling Defendant shall pay to EPA \$225,000.00 in satisfaction of its obligation to pay Interim Response Costs for the Higgins Disposal Site. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2001-V-00202, EPA Site/Spill ID Number 02-3C, and DOJ Case number 90-11-3-1486/2. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the District of New Jersey following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

d. At the time of payment, Settling Defendant shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XIV (Notices and Submissions).

5. Of the \$16,500,000.00, plus Interest, to be paid to the United States by Settling Defendant pursuant to Subparagraphs 4.a and b above, \$16,000,000.00, plus Interest, shall be deposited in the EPA Hazardous Substance Superfund, and \$500,000.00, plus Interest, shall be deposited in the Higgins Disposal Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Higgins Disposal Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

6. Interest on Late Payments. If Settling Defendant fails to make any payment under Paragraph 4.a, b and c of Section VI (Reimbursement of Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

7. Stipulated Penalty

a. If Settling Defendant fails to make the payments when due, Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA as a stipulated penalty, in addition to the Interest due, the following amounts per violation per day:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 st through 14 th day
\$2,500	15 th through 30 th day
\$5,000	31 st day and beyond

b. Stipulated penalties are due and payable within thirty (30) days of the date of the demand for payment of a penalty by EPA. All payments to the United States under this Section shall be identified as "stipulated penalties" and shall be remitted via Electronic Fund Transfer ("EFT"), along with the following information, to EPA's Account with Mellon Bank, Pittsburgh, Pennsylvania:

- i. Amount of payment
- ii. Title of Mellon Bank account to receive the payment: EPA
- iii. Account code for Mellon Bank account receiving the payment: 9108544
- iv. Mellon Bank Routing Number: 043000261
- v. Name of Party making payment
- vi. DOJ case Number: 90-11-3-1486/1 (Higgins Farm) and 90-11-3-1486/2

(Higgins Disposal)

- vii. Site Spill Identifier Nos. 02-W9 (Higgins Farm) and 02-3C (Higgins Disposal)

c. At the time of the EFT, a letter shall be sent by Settling Defendant indicating that the payment is for stipulated penalties, and shall reference EPA Region 2, the Site/Spill ID Numbers 02-W9 (Higgins Farm) and 02-3C (Higgins Disposal), the DOJ Case Numbers 90-11-3-1486/1 (Higgins Farm) and 90-11-3-1486/2 (Higgins Disposal), and the name and address of the party making the payment. The letter shall be sent to the United States as provided in Section XIV (Notices and Submissions), and to Chief, Financial Management Branch, U.S. EPA Region 2, 290 Broadway, 29th Floor, New York, NY 10007-1866.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due or the day a violation occurs and shall continue to accrue through the date of payment or the final day of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

8. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

9. Payments made under this Section shall be in addition to any other remedies or actions available to the United States by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

10. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

VIII. COVENANTS NOT TO SUE BY PLAINTIFF

11. a. For Higgins Farm Site. In consideration of the payment that will be made by the Settling Defendant pursuant to Paragraph 4.a of this Consent Decree, and except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. § 9606 and 9607(a) with regard to the Higgins Farm Site. With respect to past and future liability, these covenants not to sue shall take effect for the Settling Defendant upon the receipt by EPA of the payment required by Paragraph 4.a of Section VI (Reimbursement of Response Costs). These covenants not to sue Settling Defendant

with regard to the Higgins Farm Site are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendant for the Higgins Farm Site and do not extend to any other person.

b. Settling Defendant shall not be responsible for the NCH Groundwater Investigation, response costs or response actions EPA determines are necessary as a result of such investigation, except the United States reserves its rights to pursue Settling Defendant for any response costs or response actions to address sources of groundwater contamination or sources of soil contamination which were not known information or known conditions as identified in Paragraph 15.

12. For Higgins Disposal Site. In consideration of the payments that will be made by the Settling Defendant pursuant to Paragraph 4.b and c of this Consent Decree, and except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant for Past Response Costs and Interim Response Costs at the Higgins Disposal Site pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. § 9606 and 9607(a). These covenants not to sue shall take effect for the Settling Defendant upon the receipt by EPA of the payments required by Paragraph 4.b and c of Section VI (Reimbursement of Response Costs). These covenants not to sue Settling Defendant for Past Response Costs and Interim Response Costs at the Higgins Disposal Site are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendant for the Higgins Disposal Site and do not extend to any other person.

IX. RESERVATION OF RIGHTS BY UNITED STATES

13. United States' Pre-certification Reservations.

a. As to the Higgins Farm Site. Notwithstanding any other provisions of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant,

1. to perform further response actions relating to Higgins Farm, or
2. to reimburse the United States for additional costs of response,

if, prior to Certification of Completion of the Remedial Action for the Higgins Farm Superfund Site:

- (i) conditions at Higgins Farm, previously unknown to EPA, are discovered, or

- (ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action for the Higgins Farm Superfund Site is not protective of human health or the environment.

b. As to the Higgins Disposal Site. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant,

1. to perform further response actions relating to Higgins Disposal, or
2. to reimburse the United States for additional costs of response,

if, prior to Certification of Completion of the Remedial Action for the Higgins Disposal Superfund Site:

- (i) conditions at Higgins Disposal, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action for the Higgins Disposal Superfund Site is not protective of human health or the environment.

14. United States' Post-Certification Reservations

a. As to the Higgins Farm Site. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant

1. to perform further response actions relating to Higgins Farm, or
2. to reimburse the United States for additional costs of response,

if, subsequent to Certification of Completion of the Remedial Action for the Higgins Farm Superfund Site:

- (i) conditions at Higgins Farm, previously unknown to EPA,

- (ii) are discovered, or information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action for the Higgins Farm Superfund Site is not protective of human health or the environment.

b. As to the Higgins Disposal Site. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant

1. to perform further response actions relating to Higgins Disposal, or
2. to reimburse the United States for additional costs of response,

if, subsequent to Certification of Completion of the Remedial Action for the Higgins Disposal Superfund Site:

- (i) conditions at Higgins Disposal, previously unknown to EPA, are discovered, or
 - (ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action for the Higgins Disposal Superfund Site is not protective of human health or the environment.

15. For purposes of Paragraphs 13.a and 14.a, the information and the conditions known to EPA relating to the Higgins Farm Site shall include that information and those conditions known to EPA through the Effective Date, including, but not limited to, the information and conditions set forth in the October 2003 Higgins Farm Superfund Site Five-Year Review, the October 22, 1999 Remedial Action Report, the September 30, 1992 Record of Decision, the September 24, 1990 Record of Decision, and the May 2004 Remediation System Evaluation Report. For the purposes of Paragraph 13.b, the information and conditions known to EPA relating to the Higgins Disposal Superfund Site shall include only that information and those conditions known to EPA as of the date the ESD for the Higgins Disposal Site was signed and set forth in the ESD and the administrative record supporting the ESD.

16. For the purposes of Paragraph 14.a, the known information and known conditions relating to the Higgins Farm Site shall include the information and conditions as described in Paragraph 15 and that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action for the Higgins Farm Superfund Site. For

purposes of Paragraph 14.b, the information and conditions known to EPA relating to the Higgins Disposal Site shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action for the Higgins Disposal Superfund Site and set forth in the ESD, the administrative record supporting the ESD or in any information received by EPA prior to Certification of Completion of the Remedial Action for the Higgins Disposal Superfund Site.

17. General Reservations of Rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Plaintiff's Covenants Not to Sue in Paragraphs 11 and 12. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant including, but not limited to:

- a. claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release or threat of release of Waste Material outside of the Sites;
- c. liability for costs incurred or to be incurred by the United States at the Higgins Disposal Site that are not within the definitions of Past Response Costs for Higgins Disposal and Interim Response Costs for Higgins Disposal;
- d. liability for violations of federal and state law which occur during or after implementation of the Remedial Action.
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- f. criminal liability.

X. COVENANTS BY SETTLING DEFENDANT

18. Subject to the reservation in Paragraphs 19 and 20, Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to either Site or this Consent Decree including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;
- b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to either Site; or

c. any claims arising out of response actions at or in connection with either Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

19. Except as provided in Paragraph 23 (Waiver of Claims Against Certain Parties) and Paragraph 27 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section IX (Reservation of Rights by United States), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

20. Settling Defendant further reserves, and this Consent Decree is without prejudice to, claims against the United States seeking to recover a portion of any claim or judgment against Settling Defendant, if and only if Settling Defendant's claims meet the following conditions:

a. the claim must be based upon the Department of Energy's involvement in the COED project at Settling Defendant's Princeton, New Jersey facility;

b. the claim must be for a portion of the Settling Defendant's liability (including potential liability) at one or both of the Sites; and

c. the claim or judgment must emerge from an action brought by the State of New Jersey relating to one or both of the Sites.

21. Settling Defendant further reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight of approval of Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

22. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

23. Waiver of Claims Against Certain Parties for Higgins Farm Site:

Settling Defendant agrees not to assert any claims and to release or waive all claims or causes of action that it may have for all matters relating to the Higgins Farm Site, including for contribution, against Shell Chemical Company and Firmenich, Inc. under CERCLA. This waiver shall not apply with respect to any defense, claim, or cause of action Settling Defendant may have against Shell Corporation or Firmenich if they assert a claim or cause of action relating to the Higgins Farm Site against Settling Defendant.

XI. EFFECT OF SETTLEMENT / CONTRIBUTION PROTECTION

24. Except as provided in Paragraph 23 (Waiver of Claims Against Certain Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 23 (Waiver of Claims Against Certain Parties), each of the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Sites against any person not a Party hereto.

25. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States, or any other person with respect to the Sites. The "matters addressed" in this settlement do not include those response costs or response actions which are or may be the subject of Paragraph 13, Paragraph 14 and Paragraph 17 of this Consent Decree; those response costs or response actions at the Higgins Farm Site to address sources of groundwater contamination or sources of soil contamination which were not known information or known conditions as identified in Paragraph 15; or for claims for failure to comply with this Consent Decree.

26. Settling Defendant also agrees that with respect to any suit or claim for contribution brought against it, after the Effective Date, for matters related to this Consent Decree, it will notify in writing the United States within twenty (20) days of service of the complaint on it. In addition, Settling Defendant shall notify the United States within ten (10) days of service or receipt of any Motion for Summary Judgment and within twenty (20) days of receipt of any order from a court setting a case for trial.

27. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs or other appropriate relief relating to one or both Sites, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-

splitting, the entire controversy doctrine or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section VIII (Covenants Not to Sue by Plaintiff).

XII. ACCESS TO INFORMATION

28. Settling Defendant shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within its possession or control or that of its contractors or agents relating to activities at the Sites, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Sites.

29. Confidential Business Information and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendant that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendant.

b. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing records, it shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted by Settling Defendant. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no records created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

30. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Sites.

XIII. RETENTION OF RECORDS

31. Until ten years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Sites or the liability of any person under CERCLA with respect to the Sites, regardless of any corporate retention policy to the contrary.

32. After the conclusion of the document retention period in the preceding Paragraph, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA and DOJ, Settling Defendant shall deliver any such records or documents to EPA. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

33. Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Sites since notification of potential liability by the United States or the State or the filing of suit against it regarding the Sites and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XIV. NOTICES AND SUBMISSIONS

34. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3- 1486/1 and 90-11-3-1486/2)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

ATTN: Higgins Farm Remedial Project Manager
U.S. Environmental Protection Agency-Region 2
290 Broadway
New York, New York 10007-1866

ATTN: Higgins Disposal Remedial Project Manager
U.S. Environmental Protection Agency-Region 2
290 Broadway
New York, New York 10007-1866

ATTN: Higgins Farm and Higgins Disposal Superfund Site Attorney
U.S. Environmental Protection Agency-Region 2
Office of Regional Counsel
290 Broadway, 17th Floor
New York, New York 10007-1866

As to Settling Defendant:

Robert T. Forbes
Director, Environment
FMC Corporation
1735 Market Street
Philadelphia, Pennsylvania 19103

John F. Stillmun
Assistant General Counsel
FMC Corporation
1735 Market Street
Philadelphia, Pennsylvania 19103

Kenneth H. Mack, Esq.
FOX ROTHSCHILD, LLP
Princeton Pike Corporate Center
997 Lenox Drive, Building 3
Lawrenceville, NJ 08648-2311

XV. RETENTION OF JURISDICTION

35. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION/APPENDICES

36. The following appendices are attached to and incorporated into this Consent

Decree:

"Appendix A" is the December 9, 2002 Explanation of Significant Differences for the Higgins Disposal Superfund Site;

"Appendix B" is a map of the Higgins Farm Superfund Site; and

"Appendix C" is a map of the Higgins Disposal Superfund Site.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

37. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

38. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. EFFECTIVE DATE

39. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XIX. SIGNATORIES/SERVICE

40. The undersigned representatives for Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

41. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified them in writing that it no longer supports entry of the Consent Decree.

42. Settling Defendant hereby agrees not to oppose entry of the Consent Decree, or to challenge any of the provisions of the Consent Decree involving NCH Corporation.

43. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XX. FINAL JUDGMENT

44. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement

embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

45. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 16th DAY OF October, 2006.


SUSAN D. WIGENTON
United States District Judge


10/24/06

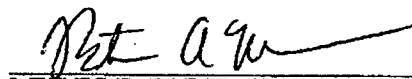

JOHN C. LIFLAND
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. NCH Corporation, et al., Civil Action No. 98-5268 (DMC) and United States v. FMC Corporation and Lisbeth Higgins, Civil Action No. 01-0476 (JCL) relating to the Higgins Farm and Higgins Disposal Superfund Sites.

FOR THE UNITED STATES OF AMERICA

Date: August 9, 2006


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Environment and Natural Resources Division
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FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 6/20/06



GEORGE PAVLOU

Director
Emergency and Remedial Response Division
Region 2
U.S. Environmental Protection Agency
290 Broadway
New York, New York 10007-1866



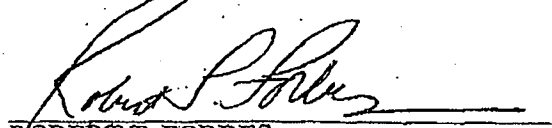
DEBORAH SCHWENK

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290 Broadway
New York, New York 10007-1866

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FOR FMC CORPORATION

Date: 6/24/06


ROBERT T. FORBES
Director, Environment
FMC Corporation
1735 Market Street
Philadelphia, Pennsylvania 19103